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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-------------------------|-------------|----------------------|---------------------|------------------|
| 10/755,967 | 01/12/2004 | Rene Armstrong | RA2 | 2987 |
| 7590 | 12/09/2004 | | EXAMINER | |
| | | | TRETEL, MICHAEL | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3673 | |
| DATE MAILED: 12/09/2004 | | | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|---|-----------------------------|---|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/755,967 | ARMSTRONG, RENE | |
| | Examiner Michael Trettel | Art Unit 3673 | |
| <i>-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --</i> | | | |
| Period for Reply | | | |
| A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. | | | |
| <ul style="list-style-type: none"> - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely. - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b). | | | |
| Status | | | |
| 1) <input checked="" type="checkbox"/> Responsive to communication(s) filed on <u>08 June 2004</u> . | | | |
| 2a) <input type="checkbox"/> This action is FINAL . | | 2b) <input checked="" type="checkbox"/> This action is non-final. | |
| 3) <input type="checkbox"/> Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213. | | | |
| Disposition of Claims | | | |
| 4) <input checked="" type="checkbox"/> Claim(s) <u>1-10</u> is/are pending in the application. | | | |
| 4a) Of the above claim(s) _____ is/are withdrawn from consideration. | | | |
| 5) <input type="checkbox"/> Claim(s) _____ is/are allowed. | | | |
| 6) <input checked="" type="checkbox"/> Claim(s) <u>1-10</u> is/are rejected. | | | |
| 7) <input type="checkbox"/> Claim(s) _____ is/are objected to. | | | |
| 8) <input type="checkbox"/> Claim(s) _____ are subject to restriction and/or election requirement. | | | |
| Application Papers | | | |
| 9) <input type="checkbox"/> The specification is objected to by the Examiner. | | | |
| 10) <input checked="" type="checkbox"/> The drawing(s) filed on <u>08 June 2004</u> is/are: a) <input checked="" type="checkbox"/> accepted or b) <input type="checkbox"/> objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d). | | | |
| 11) <input type="checkbox"/> The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152. | | | |
| Priority under 35 U.S.C. § 119 | | | |
| 12) <input type="checkbox"/> Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). | | | |
| a) <input type="checkbox"/> All b) <input type="checkbox"/> Some * c) <input type="checkbox"/> None of: 1. <input type="checkbox"/> Certified copies of the priority documents have been received. 2. <input type="checkbox"/> Certified copies of the priority documents have been received in Application No. _____. 3. <input type="checkbox"/> Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). | | | |
| * See the attached detailed Office action for a list of the certified copies not received. | | | |
| Attachment(s) | | | |
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date: _____ | |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) | |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>1/12/04</u> | | 6) <input type="checkbox"/> Other: _____ | |

DETAILED ACTION

Specification

The disclosure is objected to because of the following informalities: the underlining present throughout the specification should be removed. It is not required to use underlining in a CIP application to show the added subject matter, since a CIP application is not considered to be a preliminary amendment of the parent application.

Appropriate correction is required.

The use of the trademarks Dynaflex and Santoprene has been noted in this application. They should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

Claim Objections

The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 21 to 30 have been renumbered as claims 1 to 10.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 to 7 and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 ends in a comma, and appears to be incomplete.

Regarding claim 1, the word "means" is preceded by the word(s) "strap" in an attempt to use a "means" clause to recite a claim element as a means for performing a specified function. However, since no function is specified by the word(s) preceding "means," it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967).

In line 12 of claim 1 it is unclear which one of the plural members claimed the singular term "said member" refers to. It is suggested the --each-- be inserted before "said member" to correct this.

Claim 10 contains the trademark/trade names Dynaflex and Santoprene. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is

used to identify/describe a resilient slip free artificial material made from either a foam or a rubber compound and, accordingly, the identification/description is indefinite.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, as best understood, and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Johannis (US 2,927,329). Johannis shows an invalid lift assist device that comprises at least a first section defined by individual grip members 17 linked together by a pair of spaced straps 15, 16, and a second section defined by strap ends 15a, 16a which can be wrapped around a bedframe member 11 and secured to retaining rings 25, 26. Each one of the straps 15, 16 passes through slots 20 defined in the handles 17, with folded retainer members 21, 22 being attached to the straps and wrapped around the grip members 17 and attached back to the straps. The retainers 21, 22 can be considered to be a fold section, with each one of the grips 17 to be a hand piece linked together by a strap means. Note that the claim does not preclude the use of a pair of spaced straps to form the strap means.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2 to 7 , 9, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johannis (US 2,927,329). The use of synthetic materials such as plastic polymers, nylon or polypropylene webbing, and the like is extremely well known in this and other arts, and as such it would have been obvious for the skilled artisan to have used such well known materials in the construction of the Johannis patient lift. Note also the teaching set forth in column 3, lines 59 to 61 where it is stated that the rings 25, 26 can be replaced with any well known type of buckle. The lifting device is already inherently capable of being adjusted in length, and the examiner submits that the skilled artisan would be free to use any well known kind of buckle that provides for length adjustment of a strap. Finally, the examiner notes that it is well known to provide hand grips with friction enhancing coatings and/or sleeves to enhance the ability to effectively grasp or operate a handle. Because of this well known teaching it would have been obvious to the skilled artisan to have provided the grip members 17 of the Johannis assist device with a friction enhancing coating and/or sleeve made from known polymeric materials, in order to increase the safety of the device.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Armstrong, Bjorklund, and Wicks show invalid lift assists that are of general interest. Denney and McVey show handles attached to a rope which are of general interest.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Trettel whose telephone number is 703-308-0416. The examiner can normally be reached on Monday, Tuesday, Thursday, or Friday from 7.30 am to 5.00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Shackelford, can be reached on (703) 308-2978. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.



Michael Trettel
Primary Examiner
Art Unit 3673